

RE: Rule 3-300  
8/27-28/04 Commission Meeting  
Open Session Agenda Item III.O.  
Supplemental Mailing

**ANTHONIE M. VOOGD**

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**INTER-OFFICE MEMORANDUM**

TO: MEMBERS OF THE COMMISSION  
FROM: A.M. VOOGD  
RE: RULE 3-300 (III.O)  
DATE: 8-9-04

The present rule protects clients against lawyer overreaching in all lawyer-client business transactions except the most frequent lawyer-client transactions. Consider renumbering the existing rule as paragraph (A), its subparts as (1) through (3), and adding the following new paragraph (B):

(B) A member shall not enter into a fee agreement with a client unless the client has been advised in writing that:

- (1) The terms of the fee agreement are negotiable;
- (2) The member is not acting on behalf of the client in negotiating the fee agreement;
- (3) The client may properly seek the assistance of another lawyer in negotiating the fee agreement;
- (4) The client has rights under Article 8.5 of Chapter 4 of the Business and Professions Code and the nature of such rights; and
- (5) There are provisions in standard form retainer agreement recommended by the State Bar that may be more beneficial to the client and those included in the member's proposed fee agreement.

The traditional approach is to set a standard as to what a maximum fee might be, i.e. the “unconscionable fee” standard specified in Rule 4-200. I have small regard for this ambiguous standard and have high hopes that the Commission may improve upon it. Notwithstanding, the concept behind (B) is to provide an alternative approach to preventing unreasonable fees, i.e. the client’s negotiation of reasonable fees. It seeks to overcome the proclivity of clients to accept what a lawyer might propose, however commercially unreasonable. Accordingly, (B) is consistent with the stated purpose of the Rules to protect the interests of the public.